REMARKS

The applicants acknowledge the Examiner's comprehensive Office Action with appreciation. The Office acknowledges the Applicants' Preliminary Amendment of June 3, 2004. Claims 1-13 and 15-17 remain under consideration. The Office maintains rejections for obviousness under 35 USC § 103(a) and for double-patenting.

Claims 1-13 and 15-17 are rejected for obviousness under 35 USC § 103(a) based on Gold, et al. (WO 99/01416) in view of in view of Greenshaw, Ravelli, et al., Sullivan, et al., or Wilde, et al. It is that position of the Office that Gold, et al. disclose that the same 1-aminoalkylcyclohexane compounds as those of the instant invention are "useful in a pharmaceutical composition and method for the treatment of CNS disorders or a living animal for alleviation of a condition which is alleviated by an NMDA receptor antagonist." The Office therefore concludes that Gold, et al. teach broad usefulness of the instant compounds in methods of the treatment of pathological conditions such as CNS disorders, ***even though the specific disorders of the instantly claimed method are not disclosed and even though Gold, et al. specifically disclose treatment of CNS disorders "resulting from disturbances of glutamatergic transmission."*** The Office goes on to conclude that since additional cited references show that emesis, cerebellar tremor and appetite disorders, nausea, inflammatory pain (migraine and irritable bowel syndrome), anxiety, depression, schizophrenia, and dementia are known CNS disorders, it would have been obvious to one skilled in the art that the instant compounds would have beneficial therapeutic effect in the instantly claimed method based on the disclosure of Gold, et al.

Gold, et al. discloses a method of treatment directed to "a wide range of CNS disorders which involve disturbances of glutamatergic transmission." Sullivan, et al. disclose that the regulation of appetite is a "complex process" and that anorectic drugs which act by central mechanisms have limited effectiveness. The Wilde, et al. reference is a review of Ondansteron, a selective 5-HT_3 receptor antagonist. Wilde, et al. discusses various CNS-related disorders; however, these conditions appear to

be associated with the 5-HT_3 receptor based on the statement, "The wide distribution of 5-HT_3 receptors in the body and the role of these receptors in disease have provided the rationale for investigation of Ondansteron in novel applications." Ravelli, et al. discloses that vomiting is common in children with disorders of the CNS. This reference provides little insight into the CNS receptors associated with this condition. The Greenshaw reference is a review article on the therapeutic potential of 5-HT_3 receptor antagonists in the treatment of nausea, inflammatory pain (migraine and irritable bowel syndrome), anxiety, depression, schizophrenia, dementia, and drug abuse.

With the instant Office Action, the Office has reiterated the previous rejection and added additional conditions to the list of CNS disorders considered treatable with compounds exhibiting the instant CNS activity based on the Greenshaw reference. The Office has made no substantive comment on the Applicants' previously submitted argument that the Office has provided no basis for combining the cited references. The Office only states that the Applicants' arguments have been considered but are moot in view of the new ground(s) of rejection.

The Office has cited Gold, et al. which discloses that the instant compounds are glutamatergic antagonists and useful for treating disorders of the glutamatergic system and multiple additional references which speak to different compounds as seratoninergic antagonists as well as the therapeutic potential of 5-HT_3 antagonists in general for the treatment of numerous conditions. The Office sole basis for combining the Gold, et al. reference with the additionally cited references is that these additional references speak to treating CNS disorders. This simplistic rationale is not an adequate basis for combination, as the Office has provided no teaching that compounds which treat conditions susceptible to particular receptor activity are universally effective in treating conditions susceptible to disparate receptor activity. Consequently, the rejection is without basis in law or fact to make out an obviousness rejection. The Office has not demonstrated that it would have been obvious to one skilled in the art to treat a CNS condition associated with the 5-HT_3 receptor as disclosed in Ravelli, et al., Sullivan, et al., Wilde, et al., and Greenshaw with compounds which are known to act through a glutamatergic

mechanism as disclosed in Gold, et al. Reconsideration and withdrawal of the obviousness rejection are respectfully requested.

The Office continues to reject Claims 1-13 and 15-17 under the judicially created doctrine of obvious-type double patenting as being unpatentable over Claims 5 and 7 of copending Application 10/288,819. It is the position of the Office that, although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application is drawn to a method-of-treating a list of conditions treatable by a 5-HT_3 antagonist, which includes the conditions treatable in the instant application, with the ***same compound*** as in the instantly claimed method.

The Office states that the Applicants' previously submitted arguments have been considered but were not found to be persuasive. The Office does not agree with the Applicants' assertion that the instant application does not involve the same compounds as US Serial No 10/288,819. The Office maintains its position that the applications do involve ***the same compounds*** and goes on to state that "...when U-V-W-X-Y-Z is cyclohexane, and R* is the same, so are the other substituents." The Applicants respectfully submit that the proviso and the end of Claims 5 and 7 in US Serial No. 10/288,819 specifically states "and provided that when U-Z equals cyclohexane, then at least one of $-(A)_n-(CR^1R^2)_m-$, R^3, R^4, R^5, R_p, R_q, R_r, and R_s is linear or branched lower alkenyl (C_2-C_6) or linear or branched lower alkynyl (C_2-C_6)." The instant compounds do not encompass compounds in which the above-identified substituents may be linear or branched lower alkenyl (C_2-C_6) or linear or branched lower alkynyl (C_2-C_6). Thus, if U-V-W-X-Y-Z is cyclohexane and the instant compounds and the compounds of US Serial No. 10/288,819 have ***the same*** R* substituent, then one of the other substituents must ***necessarily*** be different. Therefore, the compounds of formula I in Claims 5 and 7 of US Serial No. 10/288,819 do not encompass the compounds of instant Claims 1-13 and 15-17. Reconsideration and withdrawal of the double-patenting rejection are respectfully requested.

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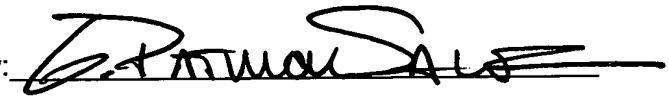
Accordingly, reconsideration of all grounds of objection and rejection, withdrawal thereof, and passage of this application to issue are all hereby respectfully solicited.

It should be apparent that the undersigned attorney has made an earnest effort to place this application into condition for immediate allowance. If he can be of assistance to the Examiner in the elimination of any possibly-outstanding insignificant impediment to an immediate allowance, the Examiner is respectfully invited to call him at his below-listed number for such purpose.

Allowance is solicited.

Respectfully submitted,
THE FIRM OF HUESCHEN AND SAGE

By: 
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THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FURTHER OR ADDITIONAL FEES WHICH MAY BE REQUIRED (DUE TO OMISSION, DEFICIENCY, OR OTHERWISE), OR TO CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NO. 08,3220.